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Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)

BellSouth Petition for Forbearance)
from Application of Section 272 of the)
Communications Act of 1934, as Amended,)
to Previously Authorized Services)

CC 96-149

BELLSOUTH PETITION FOR FORBEARANCE

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. (collectively "BellSouth"), hereby petitions the Commission pursuant to Section 10 of the Communications Act of 1934, as amended, to forbear from applying the requirements of Section 272 of the Act to BellSouth's "reverse directory" and E911 services. Additionally, because of the special circumstances described herein, BellSouth respectfully requests expedited consideration and approval of this petition.

INTRODUCTION

In the recent *Non-Accounting Safeguards Order*,¹ the Commission concluded that BOCs may continue to provide "previously authorized" interLATA services without having to obtain Section 271 authorization from the Commission.² However, the Commission has interpreted

¹ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489 (released Dec. 24, 1996), 62 Fed. Reg. 2927 (1997) ("*Non-Accounting Safeguards Order*").

² *Id.* at ¶ 77. See 47 U.S.C. § 271 (generally requiring a BOC to obtain Commission authorization before providing an interLATA service).

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Section 272(a)(2)(B) to exempt from the Section 272 separate affiliate requirements only those previously authorized interLATA services that are interLATA *telecommunications* services.³

Pursuant to the Commission's *Order*, previously authorized interLATA *information* services may continue to be offered, but are subject the separate affiliate requirements of Section 272.⁴

Nonetheless, the Commission has intimated a willingness to consider petitions for forbearance from application of those separate affiliate requirements for previously authorized interLATA information services.⁵ Accordingly, insofar as BellSouth's previously authorized reverse directory and E911 services may be considered interLATA information services by the Commission, BellSouth hereby respectfully requests forbearance from the application of Section 272 to those activities.

I. FORBEARANCE IS APPROPRIATE AND REQUIRED FOR REVERSE DIRECTORY SERVICE

A. Reverse Directory Service is a "Previously Authorized" Activity Under the Act and the Commission's *Order*

BellSouth's reverse directory service, also sometimes referred to as customer name and address (CNA) service, is a service in which BellSouth provides a customer's name, address, or both in response to the input of a telephone number. BellSouth presently offers two forms of reverse directory service. The first form of the service is offered as part of, or in conjunction with, traditional voice-based directory assistance services. The second form provides an on-line database access capability and is offered in conjunction with BellSouth's electronic white pages service (EWP). Both of these forms of reverse directory service may be deemed to be

³ *Non-Accounting Safeguards Order* at ¶ 78. See 47 U.S.C. § 272.

⁴ *Non-Accounting Safeguards Order* at ¶ 79.

⁵ *Non-Accounting Safeguards Order* at ¶ 81.

information services under the Act. Additionally, under certain circumstances, either of these forms of reverse directory service may depend on an interLATA transport component provided by BellSouth.

BellSouth obtained authorization to provide CNA or reverse directory service pursuant to an order of the MFJ court on June 2, 1989.⁶ A copy of that order is attached. BellSouth's motion underlying its authorization order was a "me too" waiver request based on similar authorization previously granted to Ameritech.⁷ A copy of the court's decision supporting the grant of authority to Ameritech is also attached. As the Ameritech authorization order makes clear, the scope of the permitted activity is comprehensive and makes no distinction between whether the reverse directory service is provided via traditional live operator directory assistance operations or through an on-line mechanized system.

When the reverse directory service is provided through traditional directory assistance operations, a caller seeking local CNA information dials the same access number (usually 411) to reach a centralized DA operator (who may be in a distant LATA), and the DA operator uses the same BellSouth provided facilities to access the same centralized database, as when a caller seeks telephone number information.⁸ In moderate contrast, a caller seeking non-local CNA dials the same 1+ number as when seeking long distance telephone number information -- a call which is carried to the centralized DA operator in this instance by an IXC. Again, however, the DA

⁶ *United States v. Western Electric*, No. 82-0192 (D.D.C. June 2, 1989) ("*BellSouth Authorization Order*").

⁷ *United States v. Western Electric*, No. 82-0192 (D.D.C. Feb. 6, 1989) ("*Ameritech Authorization Order*").

⁸ Traditional directory assistance provided in this manner is considered to be exchange or exchange access service and is thus neither an interLATA service nor an information service under the Act.

operator uses the same BellSouth facilities to access the centrally located directory assistance database as when providing the standard number-search service. BellSouth has been providing reverse directory service in this manner pursuant to the BellSouth authorization order since 1989.

Similar to the foregoing, BellSouth's directory assistance database supporting the EWP and on-line reverse directory services is centrally located in BellSouth's region. Subscribers seeking access to this database use two different dialing arrangements depending on whether the subscriber has subscribed to a regional database service or to a home NPA database service. The regional database offering provides subscribers access to names and telephone numbers of telephone subscribers throughout BellSouth's region. Subscribers to this offering place a 1+ ten digit call to reach the database. The calling subscriber's presubscribed IXC carries the call between the subscriber and the database, and BellSouth is not involved in any interLATA transmission of this call. This aspect of BellSouth's on-line reverse directory service is therefore not a subject of this petition.

In contrast, the home NPA offering is limited to the names and telephone numbers of customers in the same NPA as the subscriber to the EWP or reverse directory service. Subscribers to this offering reach the same centralized database system as subscribers to the regional service, but do so by dialing a local telephone number. For this offering, BellSouth provides the interLATA transmission component of the subscriber's call to the centralized database. BellSouth has been providing both the regional and home NPA options of its on-line

reverse directory service since the Commission granted BellSouth a waiver of the CEI requirements in July of last year.⁹

That BellSouth has been providing reverse directory service in two forms, of which only one was begun before the effective date of the Telecommunications Act, is immaterial, however, to concluding that both forms are “previously authorized” activities under the Act. Indeed, Section 271(f) of the Act expressly provides that a BOC may “engag[e], *at any time after the date of enactment of the Telecommunications Act of 1996*, in any activity to the extent [previously] authorized” by the MFJ court.¹⁰ Thus, it is the grant of the previous authorization, not the date of engaging in the authorized activity, that is the relevant factor. Accordingly, both the traditional voice-based reverse directory service and the mechanized, on-line reverse directory service are activities “previously authorized” under the MFJ and, pursuant to paragraph 81 of the *NonAccounting Safeguards Order*, are appropriate for consideration for forbearance from application of Section 272 separation requirements.

B. Both Forms of BellSouth’s Reverse Directory Service Have Already Been Determined to be in the Public Interest; Forbearance is Appropriate and Required

Section 10 of the Communications Act requires the Commission to forbear from applying any provision of the Act that is not necessary to ensure just and reasonable charges and practices in the telecommunications marketplace or to protect consumers, if the Commission finds that such forbearance is in the public interest.¹¹ The integration of both forms of reverse directory service

⁹ *BellSouth Petition for Waiver of Computer III Rules for Reverse Search Capability*, CC Docket No. 90-623, Memorandum Opinion and Order on Reconsideration, DA 96-1069 (July 3, 1996) (“*Waiver Order*”).

¹⁰ 47 U.S.C. § 271(f) (emphasis added).

¹¹ See, 47 U.S.C. § 10.

with BellSouth's standard number-search services has previously been reviewed and determined to be in the public interest. Because of the extant conditions under which the two options presently are offered, application of Section 272 separate affiliate requirements is not necessary to ensure just and reasonable charges or to protect consumers. Indeed, application of the Section 272 separation requirements may cause BellSouth to have to cease these existing service offerings to the detriment of consumers. Under these circumstances, the Commission is obligated under Section 10 to forbear from Section 272 regulation of these activities.

As noted above, BellSouth's authorization to provide reverse directory services is a result of a request for "me too" authority previously granted to Ameritech. The court's analysis supporting the Ameritech relief is therefore also applicable to BellSouth. Among the court's findings was that, first and foremost, the reverse directory service "represents a service, paid or unpaid, which the public may desire."¹² Moreover, the court found that, at the time, no other independent company had indicated a willingness or ability to provide the service and that, absent the requested authorization, the service likely would not be provided at all. This outcome, the court plainly stated, "would not be in the public interest."¹³ The court also concluded that grant of the requested relief was not likely to cause injury to any other party.¹⁴ Finally, the court determined that revenues generated by the reverse directory service would benefit ratepayers if the revenues were used solely to support rates for basic service.¹⁵

¹² *Ameritech Authorization Order* at 5.

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.* at 7-8.

BellSouth has continued since 1989 to provide its traditional, voice-based reverse directory service through its directory assistance operations pursuant to the conditions established by the court and has done so without any known adverse effects on consumers or other parties. BellSouth handles roughly 3.2 million total DA calls per business day. If even only a small fraction of these calls are for reverse directory service, BellSouth is still providing a demonstrably beneficial service to the public. There can be no reasonable argument that, after all these years, application of the Section 272 separate affiliate requirements to this activity is now necessary to ensure just and reasonable charges and practices or to protect consumers. Accordingly, Section 10 requires the Commission to forbear from applying Section 272 to BellSouth's traditional DA-based reverse directory service.

BellSouth's more recent introduction of its on-line reverse directory service in conjunction with its electronic white pages offering has also been examined and found to be in the public interest.¹⁶ Indeed, the Commission's waiver standard requires a petitioner to demonstrate that a proposed deviation from a general rule would serve the public interest, and the Commission expressly considered and granted BellSouth's request for waiver to permit BellSouth's integration of its EWP and associated reverse directory offering in the context of this public interest standard. Among other things, the Commission concluded that application of the CEI requirements was "not in the public interest in this case because compliance with [those] requirements is not necessary to allow competing providers to offer this service."¹⁷ The Commission has also

¹⁶ See note 9, *supra*.

¹⁷ *Waiver Order* at ¶ 25.

recognized the importance of BellSouth's reverse directory service to law enforcement officials.¹⁸ Finally, the Commission conditioned its approval of BellSouth's integrated offering on BellSouth's compliance with the Commission's accounting and other safeguards, thereby guarding against any undue influence on just and reasonable rates or practices.¹⁹ Accordingly, Section 272 separation requirements are not necessary to achieve these results, and the Commission is obliged to forbear from applying those requirements.

II. FORBEARANCE IS APPROPRIATE AND REQUIRED FOR E911 SERVICE

To the extent E911 service is an information service under the Act, it too is a previously authorized interLATA information service for which forbearance from Section 272 regulation is appropriate and required. As with reverse directory service above, the public interest examination has already been conducted, and BOCs' offerings of E911 service, including configurations that involve an interLATA component, have been determined to be in the public interest.²⁰ Forbearance is thus required.

¹⁸ See, *BellSouth Petition for Waiver of Computer III Rules for Reverse Search Capability*, CC Docket No. 90-623, Order, DA 96-674 (April 29, 1996) ("Interim Waiver Order").

¹⁹ *Waiver Order* at ¶ 25.

²⁰ See, e.g., letter from Constance Robinson, Chief - Communications and Finance Section, Department of Justice, to Alan Ciamporcero, Pacific Telesis Group, apparently dated March 27, 1991 (a copy of which is attached hereto). In this letter, DOJ confirmed that various interLATA transmissions of E911 data were within the scope of waivers previously granted by the decree court. DOJ added its own conclusion that "[a]llowing BOCs to provide interLATA 911 service and E911 service is in the public interest for it permits customers to reach providers of emergency services conveniently and efficiently. Moreover, . . . Regional Company provision of this limited and specialized type of interexchange service does not present any threat to competition among interexchange service providers."

III. EXPEDITED CONSIDERATION OF THIS PETITION IS REQUESTED

Section 272(h) of the Act requires BOCs to conform their affected business operations to the requirements of Section 272 within one year of the effective date of the Act, or by February 8, 1997.²¹ The Commission's *Non-Accounting Safeguards Order*, however, -- in which the Commission first established its interpretation of the relationship between Section 271(f) ("previously authorized activities") and Sections 272(a)(2)(B)(iii) and 272(a)(2)(C) (distinguishing between previously authorized interLATA telecommunications services, which are exempt from Section 272 separation requirements, and previously authorized interLATA information services, which the Commission concludes are not exempt from Section 272) -- is not effective until February 20, 1997.²² Thus, it is arguable that the obligation to comply with Section 272(h) in a manner that comports with the Commission's interpretation of that and related sections is not binding until February 20.

Whatever the appropriate deadline, however, time is of the essence in resolving this petition in a manner that is least disruptive to BellSouth's customers' use of BellSouth's services. Accordingly, BellSouth respectfully urges the Commission to act expeditiously and to grant the petition as requested herein. To the extent the Commission needs more time to consider the matters raised herein, the Commission should issue an interim forbearance order. Such an action would, at a minimum, preserve existing service arrangements and organizational structures, which both the MFJ court and this Commission have previously determined to be consistent with the public interest.

²¹ 47 U.S.C. § 272(h).

²² *Non-Accounting Safeguards Order*, 62 Fed. Reg. at 2927.

CONCLUSION

For the reasons set forth herein, BellSouth respectfully asks the Commission to forbear from applying the Section 272 separate affiliate requirements to BellSouth's previously authorized reverse directory and E911 services.

Respectfully submitted,

BELLSOUTH CORPORATION

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DATE: February 7, 1997

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN ELECTRIC COMPANY,
INC., and
AMERICAN TELEPHONE AND
TELEGRAPH COMPANY,

Defendants.

Civil Action No. 82-0192 MHG

FILED

JUN - 2 1989

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

ORDER

Upon consideration of the motion filed by the United States on May 12, 1989 for a waiver of section II(D)(2) of the Modification of Final Judgment to permit the BellSouth Operating Companies to provide customer name and address ("CNA") service throughout the BellSouth region, it is hereby

ORDERED That the motion is hereby granted and that the BellSouth Operating Companies are permitted to provide customer name and address service throughout the BellSouth region, on the condition that BellSouth complies with the undertaking in the affidavits of Roger M. Flynt, Jr. of South Central Bell and Alan E. Thomas of Southern Bell certifying that the BellSouth Operating Companies will use the revenues generated by the customer name and address service solely to support their regulated operations and will not divert those revenues to support other business ventures.

Harold H. Greene

Harold H. Greene
United States District Court

dated: June 2 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN ELECTRIC COMPANY,
INC., et al.,

Defendants.

Civil Action No. 82-0192
(HHG)

FILED

FEB 06 1989

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

MEMORANDUM

Ameritech¹ requests the issuance of an order to permit that company to provide so-called Customer Name and Address (CNA) service. This service is what has been called a "reverse" directory service, that is, a service in which the company provides a customer's name, his address, or both, upon the input of a telephone number. Ameritech asserts that Illinois Bell operators have for many years makes available this kind-of a service in the Chicago metropolitan area.

¹ The request is being submitted by the "Ameritech Operating Companies;" however, only Ameritech itself is before the Court, and the matter will therefore be treated as a motion by that Regional Company. The motion is in response to a September 9, 1988 Department of Justice report recommending against a waiver request by the Ameritech Operating Companies on June 30, 1986.

However, comparable services are not presently being provided in the remainder of the Ameritech territory.²

According to Ameritech, among the uses made of this service are the following: (1) identification of calls on telephone bills, (2) identification of call-back messages where no name has been left, and (3) identification of addresses for want ads which list only a telephone number.³ MCI, which opposes the Ameritech request, states more broadly that the "purpose of the service is to sell information, on a per-inquiry basis, to customers;" that it offers a searching capability, allowing customers "to configure their own information requests and retrieve name and address information in any order desired;" and that it "enables

² NYNEX has submitted a document entitled "Response," and it might be inferred from the fact of that submission that NYNEX wishes to engage in this service, although that Regional Company has not specifically so stated.

U S West may also be desirous of reentering this field. That company had been providing a similar service until the beginning of this year. Suspension of the service prompted complaints from customers who contacted the Court, representing that U S West employees had informed them that a recent decision of this Court necessitated the suspension -- an assertion that is, of course, incorrect. In any event, whether or not the facts being disseminated are accurate, a campaign by a Regional Company to seek to influence the Court through third-party lobbying is as improper as it is useless. Courts are not amenable to pressure by lobbying campaigns, and a party to a court proceeding that attempts deliberately to pressure the court by such a campaign may be held to have violated the law.

³ Request for Waiver at 3 (June 30, 1986).

callers without access to the printed Yellow Pages to obtain the name, addresses, and telephone numbers of convenient suppliers."⁴ This, it is said, is unlike the fundamental purpose of traditional directory assistance in that it permits the caller inter alia to screen called party locations and to mass market to particular geographic areas -- matters entirely unrelated to the placing of telephone calls.⁵ It follows from all of this, says the American Newspaper Publishers Association, that if a Regional Company can offer this kind of service "it will have the ability (through its access to and control of the underlying information) and the incentive (to protect its revenues) to discriminate against would-be competitors."⁶

Based on these facts, two questions are before the Court: (1) is Ameritech entitled to provide this service as a matter of right, and (2) if not, should it be granted a waiver permitting it to do so?

There can be no question but that the answer to the first question must be in the negative. The Department of

⁴ MCI Opposition at 5-6.

⁵ MCI Opposition at 6.

⁶ Response of American Newspaper Publishers Association at 4. The ANPA does not oppose a waiver permitting Ameritech to continue its present service in the Chicago area on a "grandfather" basis, but it opposes broader permission.

Justice, which is clearly sympathetic to the Ameritech position,⁷ was forced to conclude that CNA is an information service, prohibited to the Regional Companies by section II(D)(3) of the decree, because it constitutes "the offering of a capability for . . . retrieving . . . information which may be conveyed by telecommunications."⁸ That is clearly correct.

Indeed, the purpose of the service is to provide, that is to sell, information, the very activity prohibited by section II(D)(2) of the decree.⁹

It should also be noted that, contrary to much moaning in Ameritech's papers about the important services it is rendering to the public and the necessity to prevent harm to

⁷ The Department makes a point of reminding the Court that in the triennial review proceedings it took the position that, with respect to information services, there was no substantial risk that the Regional Companies could use their monopoly power to impede competition, and that it therefore wanted the applicable restriction removed. Report of the United States at 2-3.

⁸ Section IV(J) of the decree.

⁹ Ameritech's claims that the CNA service is just like directory assistance or akin to the White Pages directories are entirely without merit. The function of directory assistance is to obtain an individual's telephone number so as to enable another to place a call; that obviously is not the purpose of CNA. As for the White Pages analogy, it is simply a rescuscitation of an assertion made previously in a somewhat different context where the Court rejected it as "subsum[ing] almost all distinctions between White and Yellow Pages." United States v. Western Electric Co., No. 82-0192, slip op. at 38 (D.D.C. March 7, 1988).